

2010

The Social, Psychological, and Political Causes of Racial Disparities in the American Criminal Justice System

Michael Tonry

University of Minnesota Law School, tonry001@umn.edu

Follow this and additional works at: https://scholarship.law.umn.edu/faculty_articles



Part of the [Law Commons](#)

Recommended Citation

Michael Tonry, *The Social, Psychological, and Political Causes of Racial Disparities in the American Criminal Justice System*, 39 CRIME & JUST. 273 (2010), available at https://scholarship.law.umn.edu/faculty_articles/502.

This Article is brought to you for free and open access by the University of Minnesota Law School. It has been accepted for inclusion in the Faculty Scholarship collection by an authorized administrator of the Scholarship Repository. For more information, please contact lenzx009@umn.edu.

Michael Tonry

The Social, Psychological, and Political Causes of Racial Disparities in the American Criminal Justice System

ABSTRACT

Imprisonment rates for black Americans have long been five to seven times higher than those for whites. The immediate causes are well known: high levels of black imprisonment resulting in part from higher black than white arrest rates for violent crime and vastly higher black drug arrest rates. Drug arrest disparities result from police decisions to concentrate attention on drugs blacks sell and places where they sell them. Prison disparities are aggravated by laws prescribing sentences of unprecedented severity for offenses for which blacks are disproportionately arrested. Those practices and policies were shaped by distinctive sociological, psychological, and political features of American race relations. Work on the psychology of American race relations shows that many white Americans resent efforts made to help black Americans overcome the legacy of racism; that stereotypes of black criminality support whites' attitudes toward drug and crime control policy; and that statistical discrimination, colorism, Afro-American feature bias, and implicit bias cause black offenders to be treated especially severely. Sociological work on racial stratification shows that whites support policies that maintain traditional racial hierarchies. Contemporary drug and crime control policies are components of the Republican Southern Strategy, shaped by and exacerbating those phenomena,

Michael Tonry is professor of law and public policy, University of Minnesota Law School, and senior fellow, Netherlands Institute for the Study of Crime and Law Enforcement. This essay appears in a different version as chap. 4 of Michael Tonry's *Punishing Race: A Continuing American Dilemma* (Oxford: Oxford University Press, 2010).

© 2010 by The University of Chicago. All rights reserved.
0192-3234/2010/0039-0007\$10.00

to use crime as a “wedge issue” to appeal to whites’ racial anxieties and resentments.

Imprisonment rates for black Americans have been five to seven times higher than those for whites since the mid-1980s. A third of black men in their 20s are in prison or jail or on probation or parole. A third of black baby boys born in 2001 will spend part of their lives as inmates in a federal or state prison. These are extraordinary numbers that raise fundamental questions about racial, social, and criminal justice in twenty-first-century America.

Two important causal questions are raised. The first is how those numbers happened. Those answers are clear. Although violent crime arrest rates for blacks are higher than for whites, the differential has long been declining. Group differences in violent crime do not explain racial disparities in prison. What does explain them is a combination of police practices and legislative and executive policy decisions that systematically treat black offenders differently, and more severely, than whites. Policy makers emphasized law enforcement approaches to drug abuse over preventive ones. Police drug law enforcement focused effort on inner-city, primarily minority, neighborhoods, where many black Americans live, and on crack cocaine, of which blacks are a large majority of arrested sellers. Police officers engaged in widespread racial profiling and stopped blacks on streets and sidewalks much more often than is justifiable in terms of objective, race-neutral criteria. More broadly, legislatures and administrative agencies established policies in the 1980s and 1990s that mandated sentences of historically unmatched severity for violent and drug crimes, for both of which blacks are disproportionately often arrested and prosecuted.

The second question is, inevitably, *Why?* Possible answers range from deliberate antiblack racism to innocent inadvertence. Racism in its most blatant forms is not the answer. Conscious racial discrimination is not so pervasive in the early twenty-first century, nor was it in the last two decades of the twentieth, that it is likely that policy makers and police officials were primarily motivated by invidious aims or beliefs.

Nor is inadvertence believable—that policies were chosen and practices were followed in good faith—and it simply never occurred to anyone that black Americans would disproportionately suffer. No credible case can be made that gross racial disparities were unforeseeable. Everyone, we know, sees the world through filters shaped by personal

values and ideologies, and reasonable people accordingly differ in their assessments of the scientific evidence about the effectiveness of drug and crime control policies. Reasonable people, however, cannot have failed to recognize that policies adopted since the mid-1980s would produce foreseeable undesirable side effects. No informed person could have failed, for example, to foresee that unprecedentedly harsh penalties for crack offenses would hit black drug dealers especially hard. Nor, since black arrest rates for serious violent crimes have long been higher than white rates, could any informed person have failed to understand that three-strikes, lengthy mandatory minimum sentence, truth-in-sentencing, and life without possibility of parole laws would disproportionately send black offenders to prison and keep them there.

One possible explanation is uncomfortably close to racism: officials knew that blacks would disproportionately suffer but did not care. For reasons of political self-interest, ideology, or partisanship, they enacted disparity-causing policies anyway. At least for some policy makers, this is what happened. They acted as if it were more important to score political and ideological points than to worry about the effects on individual human beings of the policies they promoted. Similar things have happened in many policy realms in recent decades, and there is little reason to doubt that it happened in relation to drugs and crime.

Americans have lived through three decades in which many conservative politicians at the federal level—and in some states, most notably California and Texas—adopted scorched earth political strategies in which ideological purity, frustrating Democratic policy initiatives, or obeisance to key constituencies have been more important to them than formulating sensible public policies. Examples outside the criminal justice system include the decision to shut down the federal government in the early 1990s rather than negotiate budget reforms, health care reform during the early years of the Obama administration, and refusal to support meaningful gun control legislation despite heavy public support for it. Examples inside the justice system are countless.

One stark example was the persistent refusal of federal policy makers to amend or repeal the 100-to-one law for sentencing of cocaine offenders.¹ No one questions that the law produces unwarranted racial

¹ This refusal is the more striking because the 100-to-one law is the one contemporary crime control policy that whites oppose when they become aware of the racial disparities it causes. Levels of whites' support for capital punishment do not significantly change when they learn that blacks are much more likely to be sentenced to death than whites or that black killers of white victims are much more likely than any other killers to be

disparities, and almost everyone agrees that it is unjust. Three Republican administrations and Bill Clinton's, however, refused to change it. In 2008 former President Clinton called the law a "cancer" and said, "I regret more than I can say that we didn't do more on it" (Wickham 2008). However, his administration was unwilling to act, from fear of opening itself to Republican accusations of softness. The Clinton White House rejected proposals by the U.S. Sentencing Commission, initially endorsed by Attorney General Janet Reno and "drug czar" Barry McCaffrey, to eliminate the 100-to-one difference. Congress passed legislation to reject the commission proposal; Clinton signed it. That was more than 15 years ago. Finally, in August 2010, President Obama signed legislation to reduce the crack/powder differential to 18-to-one. This is a half-a-loaf compromise.²

The challenge is to understand why for a quarter century most urban police leaders and many state and federal policy makers adopted and supported disparity-causing policies and practices. The answer is not uncomplicated, but it is gradually becoming clear. Three powerful forces in the history and culture of American race relations interacted. The first is a psychology of race relations characterized by stereotypes of black criminals, by unconscious preferences for whiteness over blackness, and by a resulting lack of empathy among whites for black offenders and their families. The second, which shaped the first, is a three-century-old pattern of economic, political, and social dominance of blacks by whites. The third, enabled by the first two, is the Republican Southern Strategy of appealing to racial enmities and anxieties by use of seemingly neutral code words.

Research on social stratification shows how contemporary drug and crime control policies have helped sustain a historic pattern of white political and economic dominance over blacks. Few police officials and other policy makers have been consciously motivated by that goal. In-

sentenced to death. Whites' support for the 100-to-one law plummets when they learn of its racially skewed effects (Bobo and Johnson 2004).

² The U.S. Sentencing Commission (2007) revised its crack and cocaine guidelines in 2007. Twenty years earlier the commission, then differently constituted, made guideline sentences for crack offenses even more severe than the legislation required; those earlier guidelines provisions were repealed. Those changes, a *New York Times* article reported, merely nibble at the edges because the federal statute continued in force unaltered: "The sentencing commission's striking move on Tuesday, meant to address the wildly disproportionate punishments for crack and powder cocaine, will have only a minor impact. Unless Congress acts, many thousands of defendants will continue to face vastly different sentences for possessing and selling different types of the same thing" (Liptak 2007, p. A21).

stead they have viewed the world through what might be called white eyes. The minds behind the eyes, we know better than we once did, were influenced by stereotypes of black street criminals and drug dealers and saw disparities as “chips falling where they may.” Some, in a more melancholy mood, may have thought, “Life is unjust but there is nothing we can do about it.” The minds behind the eyes, we also now know better than before, often lacked empathy for black offenders, largely because of social distance and lack of personal contact, and partly because of widely held resentments toward black people in the aftermath of the civil rights movement.

A half dozen different intertwined literatures on the psychology of race relations show how insensitivity to the interests of black people became a theme of crime and drug control policy. One demonstrates that the mass media—news and entertainment both—regularly portray criminals as black and victims as white and that those stereotypes seep into people’s thinking. When asked to envision a drug addict or a violent criminal, most white people assume the typical offender to be black. Because these findings have long been known, I do not discuss them at length. A second literature on “implicit bias” shows that when asked to associate black and white with such qualities as pleasant and unpleasant or dangerous and safe, most people (including often black people) associate black with unpleasant and dangerous and white with pleasant and safe. These reactions are near instantaneous and unconscious but influence what people think and do. A third, on “colorism,” shows that the darker the skin tone of a black suspect, the likelier people are to believe him to be a criminal, and the more severely he is likely to be punished. A fourth, on “Afro-American feature bias,” provides parallel findings concerning people (whites as well as blacks) whose facial features match prevailing Afro-American stereotypes. Observers associate stereotypically black faces with crime and criminals. People with such faces get punished more severely, even unto death. Finally, a fifth literature on public attitudes and opinions shows that whites have much more punitive attitudes toward offenders and that racial animus and resentment toward blacks are the strongest predictors of those attitudes.

More important, however, than unconscious processes, though made easier by them, was the deliberate decision of Republican political strategists beginning in the 1960s to use stereotypes of black criminals and proposals for tough crime policies as devices to appeal to white

voters. Kevin Phillips, an architect of the Republican Southern Strategy, observed that liberalism and Democrats in the South “lost the support of poor whites” as the civil rights movement progressed: “The Negro socioeconomic revolution gave conservatism a degree of access to poor white support which it had not enjoyed since the somewhat comparable Reconstruction era” (1969, p. 206). Phillips proposed that Republican candidates depart from the party’s historical support for civil rights, from Abraham Lincoln through the 1960s, and instead work to manipulate whites’ racial animus and anxiety in order to win votes.

The Republican Southern Strategy was premised on an extraordinary non sequitur—that black/white differences in the South in the 1960s were indistinguishable from ethnic differences at other times and places in American history. In the preface to *The Emerging Republican Majority*, the book announcing and justifying the Republican Southern Strategy, Kevin Phillips wrote that “few people realize the extent of ethnic influences in American politics. Historically, our party system has reflected layer upon layer of group oppositions: Irish against Yankee, Jewish against Catholic, French against English and so forth. Racial and ethnic polarization has neither stopped progress nor worked repression on the groups out of power” (1969, p. 22).

Those words were written late in 1968, the year when George Wallace ran as an openly racist candidate for president and Martin Luther King was assassinated. It was the end of the decade made famous by the march on Selma, notorious killings of activists, and the civil rights movement. It was the end of three centuries of white supremacy in the South. The proposition that racial polarization has “neither stopped progress nor worked repression on the groups out of power” is a mite saccharine.

Phillips’s premise was that ethnic group conflict has always characterized American politics. “Southern politics,” he observed, “like those of the rest of the nation, cleave along distinct ethnic (racial in this case) lines. Whereas in New York City, the Irish are lined up against the Jews, in the South it is principally a division between Negroes and whites” (1969, pp. 287–88). That is why the party “decided to break with its formative antecedents and make an ideological bid for the anti-civil rights South” (p. 33). The “formative antecedents” were the Republican Party’s historic commitment from Abraham Lincoln onward to civil rights.

Phillips's conclusion was that manipulation of racial passions would enable Republicans to achieve political dominance in the South and strengthen their appeal to working-class whites elsewhere. As a result, Phillips favored aggressive federal enforcement of civil rights laws and decisions, not because it was the right thing to do but because it would alienate white Democrats. Enforcement of "Negro voting rights in Dixie," he wrote, "is essential if southern conservatives are to be pressured into switching to the Republican Party—for Negroes are beginning to seize control of the national Democratic Party in southern regions" (1969, p. 464).

Elaborating on the logic of the Southern Strategy in an interview published in the *New York Times* in 1970, Phillips observed, "From now on, the Republicans are never going to get more than 10 to 20 percent of the Negro vote and they don't need more than that . . . but Republicans would be shortsighted if they weakened enforcement of the Voting Rights Act. The more Negroes who register as Democrats in the South, the sooner the Negrophobe whites will quit the Democrats and become Republicans. That's where the votes are" (Boyd 1970, p. 106).

Lee Atwater, the first President Bush's Karl Rove and developer of the Willie Horton ads used in the 1988 presidential campaign against Michael Dukakis, in a 1981 interview told a blunter story:

You start out in 1954 by saying, "Nigger, nigger, nigger." By 1968 you can't say "nigger"—that hurts you. Backfires. So you say stuff like forced busing, states' rights and all that stuff. You're getting so abstract now [that] you're talking about cutting taxes, and all these things you're talking about are totally economic things and a by-product of them is [that] blacks get hurt worse than whites.

And subconsciously maybe that is part of it. I'm not saying that. But I'm saying that if it is getting that abstract, and that coded, that we are doing away with the racial problem one way or the other. You follow me—because obviously sitting around saying, "We want to cut this," is much more abstract than even the busing thing, and a hell of a lot more abstract than "Nigger, nigger." (Herbert 2005)

In the social turbulence associated with the 1960s in general, and the civil rights movement in particular, conservative Republican politicians saw an opportunity to appeal to southern and working-class white voters who traditionally voted Democratic, a group referred to later on, in the 1980s, as "Reagan Democrats." They did so by focusing on

issues—crime, welfare fraud, “forced” busing, states’ rights, affirmative action—that served as proxies for race, “wedge issues” as they have since become known (Edsall and Edsall 1991).

The Southern Strategy is no longer official Republican Party policy, but it need not be. It achieved its short-term aim—winning elections. In the long term, however, it helped shape and reinforced prevailing negative white attitudes toward black people. As time passed, most white people abandoned ideas about black racial inferiority but replaced them with racial resentments: that disadvantaged black people have received too much support from the state and are responsible for the adverse social and economic conditions of their lives.

The rest of this essay tells that story in three parts. Section I examines recent writings on the social psychology of American race relations in connection with crime and punishment. They document and investigate mental processes that lead officials and others to engage in statistical discrimination, in which they attribute characteristics of groups to individuals, and to treat black people more severely on the basis of skin tone and distinctive Afro-American facial characteristics. A literature on public opinion and attitudes examines the causes and correlates of racial differences in attitudes toward punishment. The key findings are that much larger percentages of whites than blacks support harsh punishments, including the death penalty, for reasons that include widely held resentments toward and stereotypes about black criminals. Many fewer blacks support harsh punishments. The overwhelmingly influential reasons are widespread beliefs that the justice system is racist and treats black people unfairly (large majorities of whites disagree).

Section II examines the history of American race relations. Scholars who study “social stratification” and “racial hierarchy” have shown that American social, economic, and legal institutions have evolved over time in ways that have maintained white dominance and protected the interests of whites as a class. When one mechanism for maintaining white domination broke up, another replaced it. Slavery did the job for centuries, until the Civil War. Within decades after the war, “Jim Crow” laws restored overwhelming white predominance. After millions of blacks moved from the South to the North in the 1910s and 1920s to escape Jim Crow, the big-city ghettos, housing discrimination, and racial bias kept blacks in their subordinate place. Contemporary wars on drugs and crime took over more recently.

Section III says a bit more about the Republican Southern Strategy. Some of its most influential designers and practitioners in retrospect repudiated it and expressed regret for the roles they played. It has, alas, done lasting damage. The appeals to overt racism made by the George Wallaces and Lester Maddoxes in the 1960s were followed by the appeals to racial animus made by Richard Nixon, Ronald Reagan, and George Herbert Bush. Beliefs in the inferiority of black people were succeeded by beliefs that unfair efforts were made to help blacks overcome the legacies of slavery and racial discrimination and that blacks failed to take advantage of them. Ideological battles over affirmative action, busing, “quotas,” and “reverse racism” shaped many white people’s beliefs that the time for remediation is past and that further efforts to help disadvantaged black people unfairly deny jobs, school admissions, opportunities, and resources to whites. Those racial resentments are a principal reason why so many whites support drug and crime control policies that do so much damage to black people.

I. The Social Psychology of American Race Relations

Some Americans, including no doubt some public officials and practitioners, are racists and are biased against blacks. Larger numbers are affected by conscious stereotypes (“Many young black men are dangerous and this young black man probably is also”). Almost everyone—black Americans included—is influenced by subconscious negative associations of black people with crime and criminality. Different words are used to describe those influences—“colorism,” “Afro-American feature bias,” “implicit bias”—and different groups of researchers study them. In the end, they come to the same conclusion: Americans, especially white Americans, are predisposed to associate blackness with crime and dangerousness and are prepared to treat black offenders especially harshly as a result.

Sociologists use the term “statistical discrimination” to describe one outcome of those predispositions. Statistical discrimination is the attribution to individuals of traits that characterize groups of which they are members. Sociologist William Julius Wilson in *The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy* (1987) showed how this operates in employment. Many young black inner-city men have not been socialized into habits that employers want: coming to work on time, sticking with monotonous jobs, dressing in mainstream

ways, speaking in mainstream English, and observing conventional forms of politeness. Many employers as a consequence are skeptical about hiring young black men. Employers may be correct that young minority men who dress in trousers with drooping crotches and affect stereotypical behaviors are on average more likely than other people to be unreliable workers. However, those preconceptions in many cases lead them to reject job applicants who would be reliable workers. Extensive subsequent research, most prominently by Princeton sociologist Devah Pager (2007), has confirmed Wilson's assertions. Pager conducted a series of projects in which black and white researchers applied for the same jobs and presented identical resumes and made identical applications. The white "applicants" were much more likely to be hired.

Novelist Tom Wolfe in *Bonfire of the Vanities* (1987) describes the power of statistical discrimination in the criminal courts. Stereotypes of black criminals matter. The lawyer for a young black defendant has tried, with some success, to persuade the judge that his client is a nice kid, young, impressionable, and salvageable; played a minor role in a street robbery; and deserves a break. Then the defendant appears:

He had the same pumping swagger that practically every young defendant in the Bronx affected, the Pimp Roll. Such stupid self-destructive macho egos, thought Kramer [a prosecutor]. They never failed to show up with the black jackets and the sneakers and the Pimp Roll. They never failed to look every inch the young felon before judges, juries, probation officers, psychiatrists, before every single soul who had any say in whether they went to prison. . . . The defendant's comrades always arrived in court in their shiny black thermal jackets and go-to-hell sneakers. That was very bright too. That immediately established the fact that the defendant was not a poor defenseless victim of life in the ghetto but part of a pack of remorseless young felons. (Pp. 13–14)

The defendant does not get the break.

Statistical discrimination is a central problem in racial profiling by the police. If many young black men in particular neighborhoods, who adopt particular styles of dress, are involved in gang activities or drug dealing, police seeing a young man in that neighborhood who fits that pattern may believe it likely that he is a gang member or drug dealer and stop him, even if the individualized basis for a stop that the law requires does not exist.

The situation with court officials may be somewhat different. On the basis of personal interactions over decades with judges in many American jurisdictions, I do not believe that invidious racial bias and gross stereotypes substantially affect sentencing decisions. This is a subject judges worry about, are taught about at judicial conferences, and discuss often among themselves and with others. Sentencing research showing that there are few racial differences in sentence lengths is consistent with this belief (e.g., Spohn 2000, 2002). Judges, however, are no doubt affected by the unconscious stereotyping described in the following pages.

A. Negative Cultural Stereotypes of Black People

It is not surprising that the racial profiling literature documents excessive and poorly justified stops of black people. Two decades of research document that the media commonly portray a world of black offenders and white victims and that, when asked to describe typical violent criminals and drug dealers, white Americans describe black offenders (e.g., Entman 1992; Reeves and Campbell 1994; Beckett and Sasson 2004). Psychological processes much subtler than the crude stereotypes Tom Wolfe describes, however, are also at work. Research on the influence of skin tone and “Afrocentric” features shows that negative stereotypes are deeply embedded in American culture and operate to the detriment of blacks in the criminal justice system. They cause black offenders to be punished more severely than whites, and among blacks they cause dark-skinned people, and people with distinctively “African” facial features, to be punished more severely than light-skinned people and people with more “European” features.

“Colorism” is the “tendency to perceive or behave toward members of a racial category based on the lightness or darkness of their skin tone” (Maddox and Gray 2002, p. 250). The research field is comparatively new, but the phenomenon is old. Two-thirds of a century ago, Gunnar Myrdal observed in *An American Dilemma: The Negro Problem and Modern Democracy* that “without a doubt a Negro with light skin and other European features has in the North an advantage with white people” (1944, p. 697). A few years later, an American Council on Education report observed, “What is really crucial behind the color point is class; the implications that light color goes with higher status and the Negroid appearance with lower status, is what makes these

characteristics so important" (Davis, Dollard, and American Youth Commission 1946, p. 137).

Among American black people, dark-skinned people are at a comparative disadvantage. Harvard political scientist Jennifer Hochschild, one of the leading scholars of the subject, and her colleague Vesla Mae Weaver recently offered this summary: "Relative to their lighter-skinned contemporaries, dark-skinned blacks have lower levels of education, income, and job status. They are less likely to own homes, or to marry; and dark-skinned blacks' prison sentences are longer. Dark-skin discrimination occurs within as well as between races" (Hochschild and Weaver 2007, p. 644).

There has not been much research on the effects of colorism on people suspected or accused of crimes, but what there is suggests that dark-skinned people are more likely to be suspected and are punished more severely. Dark skin evokes fears of criminality (Dasgupta, Banaji, and Abelson 1999). Darker skin is a more easily remembered characteristic of a purportedly criminal face (Dixon and Maddox 2005).

An analysis of more than 67,000 male felons incarcerated in Georgia for their first offense from 1995 through 2002 showed that black offenders with dark skins received longer sentences than light-skinned blacks. Overall, white sentences averaged 2,689 days. The black average was 378 days longer. When the figures for blacks were broken down, however, light-skinned black people received sentences three and a half months longer than the white average, medium-skinned blacks a year longer, and dark-skinned blacks a year and a half longer.

When the type of offense, socioeconomic characteristics, and demographic factors were controlled for statistically, light-skinned defendants received sentences indistinguishable from those of whites. Medium- and dark-skinned defendants received longer ones (Hochschild and Weaver 2007, p. 649).

Scholars of Afrocentric feature bias take the analysis one step further (Blair, Judd, and Chapleau 2004). If skin tone affects stereotypes about crime and criminals, analysts hypothesized that certain stereotypically African American facial features (e.g., dark skin, wide noses, full lips) also influence decision makers' (and research subjects') judgments. The evidence confirms the hypothesis. One study found that the larger the number of Afrocentric features an individual possessed, the more "criminal" that individual appeared to be in the eyes of observers (Eberhardt et al. 2004). Other studies have shown that Afrocentric

features are associated with longer prison sentences and increased the likelihood that murderers were sentenced to death.

Several important studies have tried to assess the significance of Afrocentric feature bias. Blair et al. (2002) found that individuals with more Afrocentric features were judged by college undergraduates to have stereotypical African American traits. Blair, Chapleau, and Judd (2005) showed that observers believed that individuals with more Afrocentric features were more likely than others to behave aggressively.

Jennifer Eberhardt and three colleagues asked 182 police officers to examine photographs of male students and employees at Stanford University. Half were shown white faces and half were shown black faces. One-third of the officers were asked to rate the stereotypicality of each face on a scale, that is, how stereotypical each face was of members of that person's race. Another third, told that some of the faces might be of criminals, were asked to indicate whether the person "looked criminal." The last third were asked to rate attractiveness on a scale. Each officer completed only one of the three measures.

More black than white faces were thought to look criminal. Black faces rated above the median for stereotypical black features were judged as criminal significantly more often than were black faces rated below the median. The authors concluded that the police officers thought that black faces looked more criminal and that "the more black, the more criminal" (Eberhardt et al. 2004, p. 889).

Blair, Judd, and Chapleau (2004) analyzed the faces of inmates in the Florida Department of Corrections to learn whether facial features were associated with longer sentences. They asked undergraduates to rate the faces of a randomly selected sample of 100 black and 116 white inmates, in terms of the "degree to which each face had features that are typical of African Americans" (p. 676). The results showed that facial characteristics were a significant predictor of the lengths of sentences the prisoners were serving. After the authors controlled for race and criminal history, stereotypical black features were a significant predictor of sentence length. Within each race, more stereotypical black features were associated with longer sentences. Even those whites who had facial features that "looked black" had received longer sentences than other white prisoners.

Pizzi, Blair, and Judd (2005) investigated the effect of facial features on sentencing, starting from a presupposition that conscious bias is not likely to be a significant cause of disparities. They reasoned that judges

and prosecutors have learned to be sensitive to the possibility that they treat blacks differently and have become sensitive to some stereotypical differences. They concluded, however, that practitioners continue to treat offenders differently on the basis of the presence or absence of Afrocentric features: "Racial stereotyping in sentencing decisions still persists. But it is not a function of the racial category of the individual; instead, there seems to be an equally pernicious and less controllable process at work. Racial stereotyping in sentencing still occurs based on the facial appearance of the offender. Be they white or African American, those offenders who possess stronger Afrocentric features receive harsher sentences for the same crimes" (p. 351).

Even the chance that offenders will be sentenced to death is influenced by facial features. Eberhardt et al. (2006, p. 383), looking at cases in Philadelphia in which death had been a possible sentence, "examined the extent to which perceived stereotypicality of black defendants influenced jurors' death-sentencing decisions in cases with both white and black victims." Stanford undergraduates were shown pictures of 44 death penalty-eligible defendants, presented randomly and edited for uniformity, and asked to rate the stereotypicality of each black defendant's appearance. With stereotypicality as the only independent variable, 24.4 percent of black defendants rated below the median had been sentenced to death, compared with 57.5 percent of black defendants rated above the median.

Unconscious attribution of criminality to black people is a serious problem, and it is one that influences even other black people. Yet another source of evidence comes from the Implicit Association Test (IAT), a test developed by psychologists to assess peoples' implicit attitudes toward different groups. The IAT, which by 2008 had been taken by 4.5 million on the Internet and elsewhere, asks individuals to categorize a series of words or pictures into groups.³ Two of the groups are racial—"black" and "white"—and two of the groups are characterizations of words as "good" or "pleasant" (e.g., joy, laugh, happy) or "bad" or "unpleasant" (e.g., terrible, agony, nasty). To test for implicit bias, one version of the IAT asks respondents to press one key on the computer for either "black" or "unpleasant" words or pictures and a

³ The test, available since 1998, is offered by Project Implicit (<http://www.projectimplicit.net/>), which describes itself as combining "basic research and educational outreach in a virtual laboratory at which visitors can examine their own hidden biases." The test can be taken at <https://implicit.harvard.edu/implicit/>.

different key for “white” or “pleasant” words or pictures. In another version, respondents are asked to press one key for “black” or “pleasant” and another key for “white” or “unpleasant.” Implicit bias is defined as faster responses when “black” and “unpleasant” are paired than when “black” and “pleasant” are.

The results have consistently shown that implicit bias against blacks is “extremely widespread” (Jolls and Sunstein 2006, p. 971). The consensus view demonstrates the existence of a real unconscious bias by whites against blacks (Rachlinski et al. 2009). Almost all demographic groups show a significant implicit preference for whites over blacks. The major exception is blacks: equal proportions show implicit preferences for blacks and for whites, though blacks—unlike whites—do not show a preference for their own group.

Since the consensus view of the existence of implicit racial bias is based on the results of millions of tests of every imaginable group in the population, it would be remarkable if criminal justice practitioners were not affected by it. Much recent research as a consequence investigates the effectiveness of possible ways to alert officials to their implicit biases, so that they can attempt to reduce the biases’ influence in the same ways that practitioners have become sensitized to cruder stereotypes based on dress or hairstyles (e.g., Levinson 2007).

Some research has explicitly examined practitioners’ possible biases. Jeffrey Rachlinski and his colleagues (2009) recruited 133 judges from three jurisdictions to take implicit bias tests and to sentence hypothetical cases in which the defendant’s race was varied. The bias test, as expected, revealed implicit biases against blacks among white judges and no clear pattern among black judges. The sentencing exercise also showed a statistically significant (though not large) relationship between individual judges’ biases and the sentences they said they would impose.

Other research has focused on police. In one study, participants were shown pictures of black and white criminal suspects who were and were not carrying guns. Participants were told to imagine they were police officers and that they should shoot suspects holding guns. The findings strongly confirmed hypotheses about implicit bias. Among suspects carrying guns, whites were less likely than blacks to be “shot”; among suspects not carrying firearms, blacks were more likely to be shot (Plant, Peruche, and Butz 2005).

When George Bush used images of Willie Horton to symbolize Mi-

chael Dukakis's softness on crime in the 1988 presidential election, he was pushing a button that was waiting to be pushed, and one that manipulated and exacerbated deeply ingrained predispositions among whites to associate blackness with criminality.

B. Racial Resentments and Public Opinion about Crime and Punishment

White Americans, especially politically conservative and fundamentalist Protestant white Americans, tend to support harsh punishments, including the death penalty. Black people tend to support harsh punishments at much lower rates. Whites have substantially greater confidence in the justice system and its practitioners than do blacks. Researchers repeatedly find that measures of racial animus and resentment are strong influences on whites' punitive attitudes. Reciprocally, low levels of confidence in the fairness of the justice system are a major influence on blacks' attitudes. Most black Americans believe that the criminal justice system is racially biased and that black suspects and defendants are treated unfairly. Most whites do not.

A substantial literature on racial differences in attitudes toward and opinions about crime control policy shows that whites have rationalized a criminal justice system that is disparately severe toward blacks. Early research on the influence of race on attitudes toward the criminal justice system found that racial prejudice (measured by support for racial segregation and belief in black inferiority) was associated with whites' support for harsh sentencing (Cohn, Barkan, and Halteman 1991), as were negative racial stereotypes (Hurwitz and Peffley 1997) and racial antipathy (a preference for maintaining social distance from blacks; Gilliam and Iyengar 2000).

More recent work has struggled to find nuanced ways to disentangle the influence of racial beliefs and attitudes, distinguishing among racial bigotry, racial resentments, and negative racial stereotyping. Findings consistently show that whites' belief in inherent black inferiority has almost disappeared. Encouraging as that is, however, findings also demonstrate widely shared white resentments of post-civil rights era efforts to integrate blacks into mainstream American society and a powerful association between those resentments and support for the crime control and drug policies that have ensnared so many black Americans.

The relevant literature has exploded in recent years. The initial focus was on racial differences in support for harsh sentencing policies and

for the death penalty. The death penalty literature began to develop after the U.S. Supreme Court decided *Furman v. Georgia*, 408 U.S. 228 (1972), which suspended use of capital punishment in the United States, and *Gregg v. Georgia*, 428 U.S. 153 (1976), which reinstituted it. Researchers examined a wide range of issues, including characteristics of death penalty supporters and opponents, whether peoples' views changed if they learned more about the subject (sometimes), whether the availability of sentences of life without possibility of parole changed opinions (sometimes), and whether blacks and whites had different views (yes).

The most comprehensive survey of that literature shows that there was a 30-point racial gap in support for capital punishment in 2004 (whites: 72.5 percent; blacks: 41.7 percent). That gap had not changed since 1974 (whites: 69.8 percent; blacks: 39.9 percent) and held steady in between. The obvious question is what explains the gap. The strongest predictor of whites' support for capital punishment in our time is racial resentment: "Taken together, the extant studies reach remarkably consistent results: negative views toward African Americans—what scholars in this area have called 'racism' or 'racial animus'—predict a range of political attitudes, including greater support for capital punishment" (Unnever, Cullen, and Lero Jonson 2008, p. 53).

Efforts were made to see whether peoples' attitudes changed if they realized that blacks disproportionately occupy death row cells and that the race of the victim is a primary determinant of whether a convicted murderer is sentenced to death. Lawrence Bobo and Devon Johnson (2004) examined blacks' and whites' support for capital punishment and the crack cocaine 100-to-one law and the extent to which opinions changed in the light of information about the racial dimensions of those problems (e.g., the disproportionate presence of blacks on death rows; that killers of whites are much more likely to be sentenced to death than are killers of blacks; that most crack dealers are black). In general, except concerning the 100-to-one law, information did not significantly affect whites' opinions. Racial resentment was powerfully related to support for the death penalty:

The most consistent predictor of criminal justice policy attitudes is, in fact, a form of racial prejudice. While white racial resentment does not ever explain a large share of the variation in any of the attitudes we have measured, it is the most consistently influential of the variables outside of race classification itself. This pattern

has at least two implications. It further buttresses the concern that some of the major elements of public support for punitive criminal justice policies are heavily tinged with racial animus and thus quite likely to be resistant to change based on suasion and information-based appeals.” (Bobo and Johnson 2004, pp. 171–72)

James Unnever and colleagues have tried to isolate the influence of racial resentments on other issues. One analysis examined data from the 2006 African American Survey undertaken for the *Washington Post*, the Henry J. Kaiser Foundation, and Harvard University to explore peoples’ explanations for racial disparities in imprisonment. This is a huge survey of 1,328 African American men, 507 African American women, and 1,029 members of other racial and ethnic groups. Blacks were substantially likelier than whites to give denial of jobs and bad schools as “big reasons” for the disparity, but the largest differences concerned bias in the legal system. Seventy-one percent of blacks, but only 37 percent of whites, believed that police bias was a primary cause of disparities. Similarly, 67 percent of blacks blamed “unfair courts” but only 28 percent of whites (Unnever 2008, table 1). The degree to which black respondents had personally experienced what they perceived as racial discrimination “predicts whether African Americans believe that criminal injustices, such as whether the police target black men and whether the courts are more willing to convict African-American men, are reasons for the high incarceration among black men” (p. 527).

The racial difference in perceptions of bias in the justice system that Unnever found is echoed in findings from many other projects. The leading scholar of the subject, Harvard sociologist Lawrence Bobo, organized two representative national surveys on race, crime, and public opinion. The 2001 Race, Crime, and Public Opinion Study included 1,010 black respondents and 978 whites. Only 38 percent of whites said they believed that the criminal justice system is biased against blacks; 89 percent of blacks said that it was. Only 8 percent of blacks said that the justice system “gives blacks fair treatment”; 56 percent of whites said that it did. Seventy-eight percent of whites expressed confidence that judges treat blacks and whites equally, compared with only 28 percent of blacks. Concerning police, the gap was even bigger: 68 percent of whites expressed confidence in the police and only 18 percent of blacks did (Bobo and Thompson 2006, p. 456).

Approaching the same kinds of issues from another angle, Unnever,

Cullen, and Jones (2008) analyzed data from the 2000 National Election Study to investigate racial differences in support for social policies to address economic and social causes of crime. Respondents were asked whether they thought "the best way to reduce crime is to address social problems or to make sure criminals are caught, convicted, and punished, or something in between." A series of follow-up questions asked whether the preferred approach was a "much" or "somewhat" better way to reduce crime. Their main aim was to investigate whether and how peoples' attachment to egalitarian beliefs influenced their attitudes toward adoption of nonpunitive anticrime policies (a lot, was the answer). Their premise was that people with strong commitments to equality are more likely than others to support social policies aimed at preventing crime by reducing the social and economic inequalities associated with it. A variety of demographic (age, sex, race, education, place of residence) and attitudinal (egalitarian beliefs, racial stereotypes, racial resentment) variables were analyzed. Blacks were much more likely than whites to support social policy approaches to crime reduction. Whites with racial resentments toward blacks were much more likely to oppose social policy approaches and to support criminal justice approaches.

Devon Johnson has completed the most comprehensive analysis of the sources of racial differences in attitudes toward punishment. I describe her analysis in considerable detail to show the basis of the conclusions she drew. The data came from the 2001 Race, Crime, and Public Opinion Study. A "punitiveness index" was calculated on answers on a 1–4 scale (1 = "strongly disagree," 4 = "strongly agree") to four questions: Do you favor life sentences for third-time felons? Should parole boards be more strict, less strict, or continue current practices? Should 14–17-year-olds accused of violent crimes be tried and sentenced in adult courts? Are current punishments for violent crimes too harsh, too light, or just about right? Whites were much more likely than blacks to favor three-strikes laws and trying young people as adults, to believe that parole boards should be more strict, and to believe that punishments for violent crimes are too light.

To find out whether and how racial attitudes and beliefs influence punitive attitudes, Johnson developed a measure of perceived racial bias in the justice system and various measures of racial prejudice. Perceived racial bias was calculated from responses to three questions about con-

fidence that the police, prosecutors, and judges treat blacks and whites equally.

Racial prejudice was measured in three ways. To calculate "racial resentment," respondents were asked to indicate agreement or disagreement with six propositions (shortened and paraphrased here).

First, members of other ethnic groups have overcome prejudice and succeeded; blacks should do the same without special favors.

Second, blacks in recent years have gotten less than they deserve.

Third, government officials pay less attention to requests and complaints from black than from white people.

Fourth, blacks who receive welfare could get along without it if they tried.

Fifth, if blacks would only try harder, they would do as well as whites.

Sixth, generations of slavery and discrimination created conditions that make it hard for blacks to work their way out of the lower class.

To calculate "negative affect," general attitudes to black people, respondents were asked two questions. How often have you felt sympathy for blacks? How often have you admired blacks?

Finally, to calculate "racial stereotypes," respondents were asked on a 1–10 scale to characterize as accurate or inaccurate four negative descriptions of black people: as lazy, aggressive or violent, preferring to live on welfare, and complaining.

The analysis took account of many other characteristics of the survey respondents including demographic characteristics such as age, sex, income, education, and place of residence and other characteristics such as political beliefs, fear of crime, and having a relative or friend imprisoned. When all these characteristics were taken into account, two factors stood out. For blacks, perceptions of racial bias in the system were the major distinguishing characteristic. For whites, it was racial resentment. The other two measures of prejudice—negative affect and racial stereotypes—had discernible effects that were dwarfed by the power of racial resentment.

It might in some sense seem encouraging that whites are less likely than in earlier times to hold beliefs about racial inferiority or about race-based negative characterizations of laziness, violence, and querulousness. Their displacement, however, by racial resentments is no

cause for celebration. The consequence in some ways is more pernicious, especially in light of what we now know about statistical discrimination, colorism, Afro-American feature bias, and implicit bias. Widespread beliefs that blacks are racially inferior have been replaced by beliefs that the conditions of life that lead some black people to crime are their own fault and they deserve whatever punishment they get. Put differently, racial resentments provide a powerful basis for lack of sympathy for people caught up in the legal system. And if disproportionate numbers of blacks are arrested for drug dealing and for violent crimes, they have no cause to complain.

Devon Johnson summed up where things stand:

Given the association between race and crime in political discourse, in media accounts, and in the minds of many whites, it is likely that racial prejudice will continue to play a significant role in whites' political support for punitive policies for some time. Moreover, in light of the . . . inability of those in privileged positions to perceive racial discrimination in the administration of justice (or their unwillingness to acknowledge it), it is unlikely that blacks' cynicism toward the criminal justice system will markedly improve in the short term. (2008, p. 205)

That seems right. However, it also seems remarkable. How could the initial dynamic, with its assumptions about black inferiority, have worked? And when it became untenable, how could its reincarnation on the basis of racial resentments have continued to work? Part of the answer can be found in the history of American race relations.

II. The History of Race Relations

Ideas about statistical discrimination and social stereotyping, and about the unconscious effects of colorism and Afrocentric facial features, may be unfamiliar to some readers, but they are not difficult to grasp. Similarly pernicious effects of social stereotypes and unrecognized biases about women and gay and lesbian people were in due course recognized, and social attitudes, actions, and policies changed as a result. Few people any longer believe that menstruation makes women emotionally unstable and unsuited for leadership positions or that women lack the physical stamina and self-discipline to participate in physically demanding work or sports. Likewise, few people any longer believe that gays and lesbians' lives are governed by their sexual appetites (or

no more anyway than is true of heterosexuals) or are incapable of being successful parents. No similar changes have occurred concerning the experiences of black people in the criminal justice system. Stereotypes about racial inferiority may have been replaced by racial resentments, but to disproportionate numbers of blacks on death row or in prisons, or to black defendants in crack cocaine cases, that is a distinction without a difference.

So the question is why the effects of racial resentments persist and make many whites unsympathetic to the experiences of blacks in the criminal justice system. The most likely explanation for adoption of disparity-causing policies, and their continuation long after their effects became known, and why racial resentments have such blinding power, is the subtlest and hardest to grasp. It is that we white Americans as a class are so accustomed to seeing the world from the perspective of our own self-interest that we unconsciously support policies that ensure our social, political, and economic dominance. Anti-immigrant policies are a vulgar recent example: people hostile to immigrants may talk about the rule of law and illegal immigration, but their real, underlying concerns relate to competition for jobs, fear of social change, and worry that their own well-being will suffer. Rational analyses of economic and social effects of immigration are beside the point. Drug and criminal justice policies that destabilize poor black communities and sustain white dominance are a subtler instance of a similar phenomenon.

The stereotyping, resentments, and attributions discussed in the preceding section are unlikely by themselves to have produced and perpetuated racial profiling and 100-to-one, three-strikes, and similar laws. Police officials and other policy makers are sometimes influenced by base political considerations, but comparatively few are likely to be motivated by invidious racial bias. Conscious stereotypes and statistical discrimination no doubt play roles, especially in explaining police decisions to stop citizens on the street and judges' sentencing decisions to send to prison people they believe (often wrongly) to be dangerous. Unconscious stereotyping no doubt operates at the level of the individual case, and people with typical black features suffer as a result. All of these factors, however, are likely to be most important in individual cases and unlikely to be major causes of passage of laws and policies that treat black people especially severely.

A literature that has developed over the past 20 years explains what

happened. Contemporary drug and crime control policies are in large part products of unconscious efforts by the white majority to maintain political, social, and economic dominance over blacks.

Sociologist Loïc Wacquant's work provides insight into enduring features of American history and culture that help explain racial disparities in the justice system. His basic claim is that American cultural practices and legal institutions have operated to maintain patterns of racial dominance and hierarchy for three centuries. When one mechanism for maintaining white domination broke down, another replaced it. Until the Civil War, slavery did the job. Within 30 years after the war, the practices and legal forms of discrimination known as "Jim Crow" laws restored overwhelming white dominance. In the Great Migration in the 1910s and 1920s, millions of blacks moved from the South to the North to escape Jim Crow; the big city ghettos, housing discrimination, and other forms of discrimination kept blacks in their subordinate place (Lieberson 1980). And when deindustrialization and the flight of jobs and the middle class to the suburbs left disadvantaged blacks marooned in the urban ghettos, the modern wars on drugs and crime took over (Wacquant 2002*a*, 2002*b*).

More recently, Wacquant has explained how that happened: "Unlike Jim Crow, the ghetto was not dismantled by government action. It was left to crumble onto itself, trapping lower-class African-Americans in a vortex of unemployment, poverty, and crime, abetted by the joint withdrawal of the wage-labor market and the welfare state. . . . As the ghetto lost its economic function and proved unable to ensure ethno-racial closure, the prison was called upon to help contain a population widely viewed as deviant, destitute, and dangerous" (2008, p. 65). That is a major reason why a third of black baby boys are eventually bound for prison, why a third of young black men are under the control of the criminal justice system, and why imprisonment rates for blacks have been five to seven times those for whites since 1980.

Wacquant's argument concerns what criminal justice policies and practices do rather than what they are consciously intended to do. Thought of that way, it is hard not to see that the machinery of the criminal justice system produces devastatingly reduced life chances for black Americans.

There has to be a powerful underlying reason why the Republican Southern Strategy was adopted and why it worked, why the criminal justice system treats black Americans so badly, and why foreseeable

racially disparate effects of crime control and drug policies are disregarded. For people who do not believe that conscious racism is the reason, Wacquant's analysis provides a better explanation.

Wacquant is not alone in suggesting that contemporary American criminal justice practices are the latest in a series of social policies that operate to keep poor blacks in their places. Douglas Massey, author (with Nancy Denton) of *American Apartheid* (1993), a widely praised and decidedly nonpolemical account of housing discrimination, argued in *Categorically Unequal*, his 2007 book on social stratification, that crime policy supports white interests:

Whether whites care to admit it or not, they have a selfish interest in maintaining the categorical mechanisms that perpetuate racial stratification. As a result, when pushed by the federal government to end overt discriminatory practices, they are likely to innovate new and more subtle ways to maintain their privileged position in society. If one discriminatory mechanism proves impossible to sustain, whites have an incentive to develop alternatives that may be associated only indirectly with race and are therefore not in obvious violation of civil rights law. The specific mechanisms by which racial stratification occurs can thus be expected to evolve over time. (P. 54)

The new emphasis on retribution and punishment was achieved . . . through the deliberate racialization of crime and violence in public consciousness by political entrepreneurs. (P. 94)

As discrimination moved underground, new mechanisms for exclusion were built into the criminal justice system for Afro Americans. (P. 251)

Economist Glenn C. Loury observed in *The Anatomy of Racial Inequality* that "the deeper truth is that, for three centuries now, political, social, and economic institutions that by any measure must be seen as racially oppressive, have distorted the communal experience of the slaves and their descendants" (2002, p. 104). Later on, in introducing his 2007 Tanner Lectures at Stanford, he elaborated: "We have embraced what criminologist Michael Tonry . . . calls a policy of 'malign neglect,' and in doing so we, as a society, have stumbled more or less wittingly into a God-awful cul de sac. . . . The connection of this apparatus to the history of racial degradation and subordination in our country (lynching, minstrelsy, segregation, ghettoization) is virtually

self-evident. . . . The racial subtext of our law and order political discourse over the last three decades has been palpable” (Loury 2007; references omitted).

More recently, Loury has written, “Mass incarceration has now become a principal vehicle for the reproduction of racial hierarchy in our society” (2008, pp. 36–37). To like effect, the finding discussed earlier that racial resentment is the strongest predictor of whites’ support for severe punishment policies led Lawrence Bobo and Devon Johnson to conclude, “This pattern reinforces the claim . . . that one major function of the criminal justice system is the regulation and control of marginalized social groups such as African Americans” (2004, pp. 171–72).

These are functionalist arguments, about what criminal justice policies and practices do, rather than political ones about what those practices and policies are intended to do. The argument is not that a cabal of racist whites consciously acts to favor white interests but that deeper social forces collude, almost as if directed by an invisible hand, to formulate laws, policies, and social practices that serve the interests of white Americans. Thought of that way, if one thinks of what the machinery of the criminal justice system produces, it is hard not to see that it produces devastatingly reduced life chances for black Americans. If its aims were to reduce poor black men’s chances of earning a decent living, being successfully married and a good father, or being socialized into prosocial values, it is hard to see how the criminal justice system could do those things better (Western 2006). There has to be a reason why the criminal justice system treats American blacks so badly, why its foreseeable disparate impacts on blacks and whites are disregarded. Wacquant’s and the others’ analyses provide a better explanation than any other that has been offered.

Once the racial hierarchy/status anxiety analysis that Wacquant, Massey, Loury, and Bobo and Johnson offer is recognized, much else falls into place. David Garland, in his writing on lynchings in America during their 1890–1930 heyday, observes, “The penal excess of the lynching spectacle said things that a modernized legal process could not. . . . [I]t reestablished the correlative status of the troublesome black man, which was as nothing, with no rights, no protectors, no personal dignity, and no human worth” (2005, p. 817).

Lest the preceding discussion of racial hierarchy seem fanciful, there are plenty of other subjects concerning which similar things have hap-

pened. Housing policy offers an example. Federal housing policies of the 1950s and 1960s, though proposed and explained in neutral terms of credit risk and sound stewardship of federal dollars, operated to block blacks from moving into newly developing white suburbs and, through redlining "risky neighborhoods," to deny federally insured mortgages to residents of urban minority neighborhoods. The effect was to lock black people into deteriorated inner-city areas. In retrospect, those federal policies have been discredited and are widely recognized to have been a significant contributor to perpetuation of racially segregated housing (Massey and Denton 1993).

Nineteenth-century temperance and prohibition movements provide another example of a conflict over crime and drug policy that appeared to be about one thing (the dangers of alcohol) but was really about status conflicts between ethnic groups. Nineteenth-century movements to prohibit alcohol, in their proponents' arguments, were precipitated by the problems associated with alcohol use and were motivated to address them. In retrospect, nineteenth-century prohibition was in large part a proxy for social and status conflicts between Protestant descendants of earlier waves of British and German settlers, anxious to protect their newly acquired social status and political power, and newly arrived Irish Catholics. Many of the earlier settlers were teetotalers; many of the bibulous Irish were enthusiastic drinkers. Moralistic crusades against alcohol served as devices for expressing disapproval and social distance from newcomers that was sometimes unacknowledged or unrecognized by the prohibitionists themselves. Attacking drinking as immoral was a way to assert the moral superiority of the attackers and the moral inferiority of the attacked (Gusfield 1963).

Criminalization of particular substances reflected similar ethnic group dynamics each time it happened in the twentieth century. When heroin and cocaine were criminalized by the federal Harrison Act in 1914, the prevailing images of the "immorality" of drug use were provided by groups other than the white majority: Chinese users of opiates and black users of cocaine (Musto 1973; Courtwright 1982). The Marijuana Tax Act, the first federal criminalization of marijuana, was aimed at pot-smoking Mexican laborers whose migration into western states in search of work precipitated hostile reactions from whites not unlike those occurring early in the twenty-first century (Whitebread and Bonnie 1974). In the 1980s, the targets of unprecedentedly tough laws aimed at crack cocaine were inner-city blacks (Massing 1998, chap. 14)

A similar dynamic, though between generations rather than between ethnic groups, characterized recent drug wars generally. The first was announced by President Richard M. Nixon on July 14, 1969, in his "Special Message to the Congress on Control of Narcotics and Dangerous Drugs." The primary status conflict of the time concerning drugs was not between whites and blacks or members of other ethnic minorities, but between generations. The alcohol-using and alcohol-abusing generations that moved in the corridors of power in the 1960s and 1970s were befuddled by a troubling and disrupted world and threatened by challenges to their political and moral authority. Marijuana and hard drug use by young people encapsulated those challenges. Marijuana was widely available and widely used. LSD and cocaine had visible and outspoken proponents. Officials said, and probably believed, that they wanted to protect young people from the ravages of drug use, and in any case that drug use is irresponsible and immoral. Young people believed that the dangers were slight and that the choices should be theirs, not the state's, to make. As was true of nineteenth-century prohibition, more recent disagreements about protection of important moral standards can as readily be understood as conflicts over whose moral standards are to be preferred and expressed in the criminal law. The words of the planners of successive modern drug wars may have been about safety and responsibility, but the music was about protection of their views of the world and of the places in it of people like them (Musto and Korsmeyer 2002, p. 60).

Harvard philosopher Tommie Shelby has observed, "It is a truism about human nature—one emphasized by Max Weber—that the privileged want to maintain that they merit their advantages and that the disadvantaged deserve all their hardships" (2008, p. 80). Concerning the criminal justice system, about which concern about racial disparities in imprisonment might be expected, whites can take comfort in racial stereotypes, such as that black Americans are especially criminal, so of course so many are in prison.

The incentive to rationalize is clear. System justification theory posits "a general human tendency to support and defend the social status quo, broadly defined" (Blasi and Jost 2006, p. 1123). People, regardless of their situation, try to rationalize the injustices and inequities they see. Stereotypes (such as that the rich are smart, the poor are lazy, and blacks are criminal) are often employed to demonstrate that all members of society deserve their status. People who believe in a just world

experience, by and large, have more positive emotions than people who believe in an unjust world. For example, poor people who blame themselves for their own poverty are happier and more satisfied with life in general. By rationalizing the racial inequities in the American criminal justice system, white Americans persuade themselves that the problem is not in the policies they and people like them set and enforce, but in social forces over which they have no control.

Current crime and drug control policies, however, were not written by an invisible hand. They were enacted and implemented by human beings influenced by mixed motives, some idealistic, some cynical, some self-serving. Insofar as they were enacted as fruits of the Republican Southern Strategy, they represented deliberate manipulations of racist biases and fears and racial stereotypes and attributions to achieve partisan political aims.

III. The Southern Strategy

It is common as I did in the introduction to this essay to date the beginning of the Republican Southern Strategy in the 1960s and to describe Kevin Phillips's *The Emerging Republican Majority* (1969) as its basic text. Both things are true: the Republican Southern Strategy was first commonly used to characterize Republican Barry Goldwater's 1964 presidential campaign, and Phillips was a strategist in Richard Nixon's 1968 campaign who later published a book making a case for it, but that account oversimplifies.

Proposals that southern segregationist Democrats combine with Republican conservatives were first seriously promoted in the 1940s. Civil rights advocates began to win legal and political victories, and white supremacists began to worry. Democratic President Franklin Delano Roosevelt on June 25, 1941, signed Executive Order 8802, which established the Federal Employment Practices Commission. The order forbade racial discrimination by federal contractors and empowered the FEPC to investigate complaints. After Roosevelt's death, segregationists hoped that Harry S. Truman would be more sympathetic. Their hopes were misplaced. Within 2 months of taking office, Truman proposed legislation to make the FEPC permanent. Truman later appointed a biracial Committee on Civil Rights, which, in *To Secure These Rights* (1947), recommended enactment of antilynching, anti-poll tax, and fair employment legislation. The committee also proposed pro-

hibition of discrimination in interstate transportation and desegregation of the armed forces. In his January 7, 1948, State of the Union address, Truman announced his intention to carry out the committee's proposals (Lowndes 2008, chap. 2).

Segregationist southern Democrats were stunned. Mississippi Senator James Eastland declared, "The South we know is being swept to its destruction." Southern governors convened to denounce Truman's desegregation effort and approved a resolution mostly written by South Carolina Governor Strom Thurmond warning that the South would not "stand idle and let all of this happen" (Lowndes 2008, p. 27). Among the results was opposition to Truman's bid for reelection and the nomination of Strom Thurmond as the "Dixiecrat" candidate for president in 1948. He received 20 percent of the southern vote and carried Alabama, Mississippi, Louisiana, and South Carolina.

I stop retelling the story at that point and skip to the 1960s. A number of fine books tell it in detail and carry it forward from the 1940s (Carter 1996; Black and Black 2002; Murakawa 2005; Lowndes 2008). My aim in going back to the 1940s is to show that what became widely known as the Southern Strategy had its roots in earlier efforts by segregationists to maintain white supremacy in the South.

Barry Goldwater's 1964 campaigns first for the Republican nomination and then for the presidency were the first national campaigns in which Republicans openly played the race card. The Republican National Committee since 1961 had been pouring money into "Operation Dixie," an effort to reach out to conservative and segregationist southern Democrats, and recruiting segregationist candidates. Goldwater trod a fine line. He condemned President John F. Kennedy for sending troops to the University of Mississippi in 1962 to assure admission of the first black students. While supporting voting rights for black people, he also insisted on southerners' right to control their own destiny. Historian Joseph Lowndes observes, "As long as Goldwater held high the banner of states' rights, he could appear to split real questions of racial domination from an abstract commitment to the Tenth Amendment, and allow conservatives to show clean hands while building a segregationist party in the South" (2008, p. 67).

Other Republicans knew what was going on. New York's liberal Republican Senator Jacob Javits in 1964 accused Operation Dixie "and what was now being called the 'southern strategy' of wrecking the party by appealing to the worst in southern racial sentiment" (Lowndes 2008,

p. 63). At the Republican convention, the liberal Ripon Society declared that the party had to choose “whether or not to adopt a strategy that must inevitably exploit the ‘white backlash’ to the Civil Rights Movement in the South and the suburbs of the North” (*New York Times* 1964, p. 31).

The historical accounts make it clear that Goldwater meant to appeal to white supremacist voters. Conservative scholars Stephen and Abigail Thernstrom, for example, refer to use of race-coded issues as “rhetorical winks” that have allowed “a variety of candidates—for instance, Barry Goldwater, with his talk of states rights—to play on white racial resentment” (Thernstrom and Thernstrom 1997, p. 309).

Goldwater lost dismally, winning only 38.5 percent of the vote and six states (Arizona, Louisiana, Mississippi, Alabama, Georgia, and South Carolina), but the pattern was set. In 1968, George Wallace ran as a third-party candidate appealing openly to antiblack sentiments. Nixon ceded the segregationist Deep South to Wallace.

Goldwater showed that conservative Republicans could win elections in the Deep South by use of veiled appeals to race. However, he also showed that the ugliness of open racism could alienate voters elsewhere. Former President Richard Nixon, in a 1988 interview, observed of Goldwater that he “ran as a racist candidate . . . and he won the wrong [southern] states” (Lowndes 2008). By this Nixon meant that overt or barely disguised racist appeals that were successful in the Deep South would not win elsewhere unless made more subtly.

Goldwater, however, had cast the die, and conservative Republicans continued to cast the dice for another 25 years. Nixon’s code words were law and order and busing. The historical accounts make it clear that Nixon in 1968 tried to walk a fine line between repudiating the vulgar, overtly racist appeals of George Wallace and appealing to whites’ racial resentments and animus. One of the gentler critiques observes that supporters of the Southern Strategy, “including southern politicians and Richard Nixon and his aides, seem to have been quite conscious of the fact that the voters they targeted for mobilization were white and had racial concerns” (Mendelberg 2001, p. 11).

Racial appeals did not play a big role in the 1972 (Nixon and McGovern) or 1976 presidential campaigns but reappeared prominently in the 1980 campaign between Ronald Reagan and Jimmy Carter. Reagan’s 1980 presidential campaign was launched in Philadelphia, Mississippi, a town notorious in the history of the civil rights movement

for the 1964 murders of civil rights workers James Cheney, Michael Schwerber, and Andrew Goodman. Reagan assured those present of his adamant support for “states’ rights.” Lowndes observes, “Reagan could now seamlessly combine conservatism, racism, and antigovernment populism in a majoritarian discourse—and with it founded the modern Republican regime” (2008, p. 160).

The low point in race-coded political symbolism occurred in the Bush-Dukakis presidential campaign in 1988 and centered on Willie Horton.⁴ Horton had been convicted of a particularly gruesome murder in Massachusetts. Released under a Massachusetts prison furlough program, he absconded. Months later he broke into a suburban Maryland house, where he assaulted and tied up the man and raped his fiancée. A photograph of the bleary-eyed and disheveled Horton, taken shortly after his arrest, became a prominent image in the campaign to represent Dukakis’s softness on crime.

Although Lee Atwater, the creator of the Willie Horton strategy, and others later denied that they were playing a race card, subsequent reconstructions make it clear that they were. A focus group of 30 people who had voted for Reagan in 1984 but planned to vote for Dukakis was convened in Paramus, New Jersey, in late May 1988, a time when Bush was running far behind Dukakis in the polls. Small numbers of participants reacted negatively to Dukakis when they learned that he opposed capital punishment and as governor of Massachusetts had vetoed legislation permitting prayers in schools. And then, “paydirt,” as historian Dan Carter describes it. On learning the Willie Horton story, “fifteen of the thirty voters said they had changed their minds. They would never vote for Dukakis. Lee Atwater had found his silver bullet” (1996, pp. 72–73).

A few days later, on Memorial Day 1988, Atwater showed films of the focus group’s discussions at a campaign strategy meeting at Bush’s summer home in Kennebunkport, Maine, and proposed a campaign strategy. Within 10 days, first in Texas, then elsewhere, Bush began mentioning Horton in his campaign speeches.⁵ The campaign arranged

⁴ Horton did not call himself Willie, but William. Bush’s campaign advisor Lee Atwater chose to use “Willie,” which was more in keeping with the southern white practice of Atwater’s childhood of “referring to black men with overstated familiarity” (Mendelberg 2001, p. 142; see also Jamieson 1992).

⁵ Two of those in Kennebunkport later told a reporter, off the record, that Bush never hesitated about adopting Atwater’s proposal. He expressed concern that it might backfire, but that was all. “As far as I could tell, he had no qualms about it,” one staff member

for *Reader's Digest* to run a July story on Horton, and Atwater under the aegis of the Bush election committee developed and released a hard-hitting television commercial. Another Republican group, Americans for Bush, blanketed CNN with Bush campaign advertisements showing a picture of black, bleary-eyed Horton staring dully into the camera. Dukakis never recovered.

The Republican Southern Strategy, and its more subtly coded successors, cynically manipulated the anxieties of southern and working-class whites by focusing on issues such as crime and welfare fraud that served as code words for race. The times were ripe in the decades after enactment of the Civil Rights Act of 1964. Life in the United States was turbulent. The civil rights movement continued: busing to integrate schools, aggressive legal efforts to assure employment and housing opportunities to black people, and political developments such as the emergence of the Black Panthers and Elijah Muhammad's Nation of Islam followed in its wake. Riots broke out in black areas of cities across the country in the late 1960s. The Vietnam War ripened, provoked years of demonstrations and resistance, and ended ignominiously. Robert Kennedy and Martin Luther King were assassinated in 1968, and George Wallace was permanently crippled by an attempt on his life in 1972. The women's and gay liberation movements became newly assertive and challenged long-standing social practices and norms. OPEC declared its first embargo in the 1970s, and the first major modern economic restructuring, disproportionately affecting unionized and low-level white-collar workers, took place.

People were on edge and ready to look for scapegoats. It was a time when virtuous political leaders should have tried to reassure people, to develop practical solutions to troubling problems, and to foster improved race relations. Conservative politicians instead fostered racial conflict. It worked. David R. Roediger, a leading historian of American race relations, recently observed that Republican President Ronald "Reagan's sure command of divisive code words such as 'state's rights,' 'welfare moms,' 'quotas,' and 'reverse racism' came to be seen as key to his success at winning over 'Reagan Democrats' via racial appeals" (2008, p. 207).

In our time, politicians must tread a fine line in making appeals to

recalled. "It was just the facts of life. He realized that as far behind as he was it was the only way to win" (Schieffer and Gates 1989, p. 360).

race. Racial appeals can mobilize white voters, but as Nixon sensed, they will fail if they are seen as overtly racist. Most Americans no longer believe in the racial inferiority of black people, and most believe that racial discrimination is wrong. Reflecting the conclusions of most scholars who study race relations, Thernstrom and Thernstrom (1997, pp. 498–501) show that from the 1970s onward large majorities of whites have believed that blacks are of equal intelligence, favor integrated schools, and do not object to having blacks of their own social class as neighbors.

The most thoughtful and detailed analysis of the role of issues related to race in American politics surveys research on racial attitudes and concludes that Americans' endorsement of norms of racial equality are nearly universal:

In the age of equality, neither citizens nor politicians want to be perceived or perceive themselves as racist. The norm of racial equality has become descriptive and injunctive, endorsed by nearly every American. For most white Americans, it is a personal norm as well. Whites do not simply pay lip service to equality and continue to derogate blacks in private. Almost all whites genuinely disavow the sentiments that have come to be most closely associated with the ideology of white supremacy—the immutable inferiority of blacks, the desirability of segregation, and the just nature of discrimination in favor of whites. In this sense, nearly every white person today has a genuine commitment to basic racial equality in the public sphere. (Mendelberg 2001, pp. 18–19)

If it is true, as I believe it is, as Mendelberg and the Thernstroms conclude, that most Americans believe in racial equality and that base forms of invidious racism are no longer commonplace in American life, how is it possible that coded allusions to race and to racial resentment so long remained so common and so effective? Part of the answer can be found in the psychology of race relations that I discussed earlier. White Americans are influenced by stereotypes of black criminals, as the research on colorism, Afro-American feature bias, and implicit bias shows. And, as the research on public opinions and attitudes shows, overtly racist attitudes have been replaced by racial resentments, which are the single most powerful explanation for why many more whites than blacks support harsh criminal justice policies.

Coded racial appeals have long been effective in American politics precisely because they are coded, as Mendelberg shows in an exhaustive

analysis of media handling of the Willie Horton advertisement in the 1988 presidential campaign and afterward. The key distinction is between explicit and implicit appeals to racial stereotypes and resentments. Because of Americans' commitment to norms of racial equality, explicit appeals no longer work. They backfire, and their practitioners are widely disparaged. The successive campaigns for Louisiana governor and U.S. senator by former Ku Klux Klansman David Duke provide a vivid illustration.

Implicit appeals, however, can work: "White voters respond to implicit messages [such as Willie Horton and Reagan's 'Welfare Queen'] because they do not recognize these messages as racial and do not believe their favorable response is motivated by racism. In fact, the racial reference in an implicit message, while subtle, is recognizable and works most powerfully through white voters' racial stereotypes, fears, and resentments" (Mendelberg 2001, p. 7).

Appeals to racial issues in modern American politics, once explicit, became implicit. White segregationists in the 1960s and 1970s, who were not reconciled to the success of the civil rights movement, were motivated by invidious considerations and made explicit racial appeals when they could. Opponents of the civil rights movement, rather than continue openly to fight battles they had lost, and whose loss made open appeals to bigotry no longer politically acceptable, "shifted attention to a seemingly race-neutral concern over crime," as Glenn Loury (2008, p. 13) put it. A history of law and order politics in the 1960s similarly observed, "For conservatives, black crime would become the means by which to mount a flank attack on the civil rights movement when it was too popular to assault directly" (Flamm 2005, p. 22). Vesla Weaver explained, "Much of the legislative activity on crime came from the same hand that fed the early opposition to civil rights. . . . Through a frontlash, rivals of civil rights progress defined racial discord as criminal and argued that crime legislation would be a panacea to racial unrest" (Weaver 2007, p. 265).

Other activists, influenced by the history and social psychology of American race relations and blinded by political opportunism, were unable fully to appreciate the implications of what they were doing. Some of the latter, especially in hindsight, recognized those implications and expressed regret for their earlier actions and blindness. The most striking refutation came from Lee Atwater, creator of the Willie Horton campaign. On his deathbed, Atwater apologized for the "naked

cruelty” of the attacks on Democratic candidate Michael Dukakis: “In 1988, fighting Dukakis, I said I would ‘strip the bark off the little bastard’ and ‘make Willie Horton his running mate.’ I am sorry for both statements” (Associated Press 1991, p. 16). Harry Dent, Strom Thurmond’s senior aide in the 1960s and chairman of the Republican National Committee in the 1970s, was a prime implementer of the Southern Strategy. In a 1980 interview, he expressed regret for anything he did “that stood in the way of black people” (Stout 2007, p. B7).

James Unnever and his colleagues, at the end of an article on racial attitudes toward the justice system, offered an assessment of the consequences of the Southern Strategy: “the disturbing part of our research is not only that Americans with racial resentments were more likely to endorse the punitive approach to resolving the crime problem, but also that racial animus was the most robust predictor. . . . We did not find any evidence that having negative stereotypes of African Americans was predictive of how individuals perceive solutions to reducing crime. . . . Together, these findings are suggestive that the Republican political elites’ southern strategy ‘worked’” (Unnever, Cullen, and Jones 2008, pp. 25–26).

There are no easy paths out of the racial dead end in which the American criminal justice system finds itself. The damage has been done to living black Americans—lives blighted, families fractured, life chances reduced, communities undermined. Even radical changes in American crime policies cannot undo the damage.

For the future, there are things that can be done. The greatest damage to black Americans as a class has been done by the unprecedented severity of American crime and drug control policies. The things that need to be done include radical decarceration; fundamental changes in drug policy; repeal of mandatory minimum, three-strikes, and life without possibility of parole laws; and creation of new mechanisms for reducing the sentences of historically unprecedented length that many American prisoners now serve.

Less radical changes, which will make America a better place but not greatly reduce racial disparities, also need doing. These include training of criminal justice practitioners to make them more aware of the power of racial stereotypes, colorism, and Afro-American feature bias and development of requirements that existing policies be sub-

jected to racial disparity audits and legislative proposals to disparity impact projections.

Much of what is proposed in the preceding paragraphs may appear fanciful, and it may be. However, those proposals would do no more than return American criminal justice policies and practices to where they were 30 years ago and to where the policies and practices of other Western countries now are. It seems unlikely that Americans 30 years ago would have chosen the criminal justice system we now have. The social psychology, sociology, and politics of American race relations have brought us to a place where no one should want to be, but there is no good reason to stay here.

REFERENCES:

- Associated Press. 1991. "Gravely Ill, Atwater Offers Apology 25 Years for a Slice of Pizza." *New York Times*, January 13, sec. 1, pt. 1, p. 16.
- Beckett, Katherine, and Theodore Sasson. 2004. *The Politics of Injustice*. 2nd ed. Beverly Hills, CA: Sage.
- Black, Earl, and Merle Black. 2002. *Southern Republicans*. Cambridge, MA: Harvard University Press.
- Blair, Irene V., Kristine M. Chapleau, and Charles M. Judd. 2005. "The Use of Afrocentric Features as Cues for Judgment in the Presence of Diagnostic Information." *European Journal of Social Psychology* 35:59–68.
- Blair, Irene V., Charles M. Judd, and Kristine M. Chapleau. 2004. "The Influence of Afrocentric Facial Features in Criminal Sentencing." *Psychological Science* 15(10):674–79.
- Blair, Irene V., Charles M. Judd, Melody S. Sadler, and Christopher Jenkins. 2002. "The Role of Afrocentric Features in Person Perception: Judging by Features and Categories." *Journal of Personality and Social Psychology* 83(1): 5–25.
- Blasi, Gary, and John T. Jost. 2006. "System Justification Theory and Research: Implications for Law, Legal Advocacy, and Social Justice." *California Law Review* 94:1119–68.
- Bobo, Lawrence D., and Devon Johnson. 2004. "A Taste for Punishment: Black and White Americans' Views on the Death Penalty and the War on Drugs." *Du Bois Review* 1:151–80.
- Bobo, Lawrence D., and Victor Thompson. 2006. "Unfair by Design: The War on Drugs, Race, and the Legitimacy of the Criminal Justice System." *Social Research* 73(2):445–70.
- Boyd, James. 1970. "Nixon's Southern Strategy: 'It's All in the Charts.'" *New York Times*, May 17.

- Carter, Dan T. 1996. *From George Wallace to Newt Gingrich—Race in the Republican Counterrevolution, 1993–1994*. Baton Rouge: Louisiana State University Press.
- Cohn, S., S. Barkan, and W. Halteman. 1991. "Public Attitudes toward Criminals: Racial Consensus or Racial Conflict." *Social Problems* 38:287–96.
- Committee on Civil Rights. 1947. *To Secure These Rights*. Washington, DC: U.S. Government Printing Office.
- Courtwright, David T. 1982. *Dark Paradise: Opiate Addiction in America before 1940*. Cambridge, MA: Harvard University Press.
- Dasgupta, Nilanjana, Mahzarin Banaji, and Robert Abelson. 1999. "Group Entitativity and Group Perception: Associations between Physical Features and Psychological Judgment." *Journal of Personality and Social Psychology* 77(5): 991–1003.
- Davis, Allison, John Dollard, and American Youth Commission. 1946. *Children of Bondage: The Personality Development of Negro Youth in the Urban South*. Washington, DC: American Council on Education.
- Dixon, Travis, and Keith Maddox. 2005. "Skin Tone, Crime News, and Social Reality Judgments: Priming the Stereotype of the Dark and Dangerous Black Criminal." *Journal of Applied Social Psychology* 35(8):1555–70.
- Eberhardt, Jennifer L., Paul G. Davies, Valerie J. Purdie-Vaughns, and Sheri Lynn Johnson. 2006. "Looking Deathworthy: Perceived Stereotypicality of Black Defendants Predicts Capital-Sentencing Outcomes." *Psychological Science* 17(5):383–86.
- Eberhardt, Jennifer L., Phillip Atiba Goff, Valerie J. Purdie, and Paul G. Davies. 2004. "Seeing Black: Race, Crime and Visual Processing." *Journal of Personality and Social Psychology* 87(6):876–93.
- Edsall, Thomas, and Mary Edsall. 1991. *Chain Reaction: The Impact of Race, Rights, and Taxes on American Politics*. New York: Norton.
- Entman, Robert. 1992. "Blacks in the News: Television, Modern Racism, and Cultural Change." *Journalism Quarterly* 69(2):341–61.
- Flamm, Michael W. 2005. *Law and Order: Street Crime, Civil Unrest, and the Crisis of Liberalism in the Sixties*. New York: Columbia University Press.
- Garland, David. 2005. "Penal Excess and Surplus Meaning: Public Torture Lynchings in 20th Century America." *Law and Society Review* 39:793–833.
- Gilliam, F. D., and S. Iyengar. 2000. "Prime Suspects: The Influence of Local Television News on the Viewing Public." *American Journal of Political Science* 44:560–73.
- Gusfield, Joseph. 1963. *Symbolic Crusade: Status Policies and the American Temperance Movement*. Urbana: University of Illinois Press.
- Herbert, Bob. 2005. "Impossible, Ridiculous, Repugnant." *New York Times* (October 6).
- Hochschild, Jennifer L., and Vesla Mae Weaver. 2007. "The Skin Color Paradox and the American Racial Order." *Social Forces* 86(2):643–70.
- Hurwitz, J., and M. Peffley. 1997. "Public Perceptions of Race and Crime: The Influence of Racial Stereotypes." *Journal of Politics* 67:375–401.
- Jamieson, Kathleen Hall. 1992. *Dirty Politics*. Oxford: Oxford University Press.

- Johnson, Devon. 2008. "Racial Prejudice, Perceived Injustice, and the Black-White Gap in Punitive Attitudes." *Journal of Criminal Justice* 36:198–206.
- Jolls, Christine, and Cass R. Sunstein. 2006. "The Law of Implicit Bias." *California Law Review* 94:945–96.
- Levinson, Justin D. 2007. "Forgotten Racial Equality: Implicit Bias, Decision-making, and Misremembering." *Duke Law Journal* 57(1):345–424.
- Lieberson, Stanley. 1980. *A Piece of the Pie: Blacks and White Immigrants since 1980*. Berkeley: University of California Press.
- Liptak, Adam. 2007. "Whittling Away, but Leaving a Gap." *New York Times*, November 17, p. A21.
- Loury, Glenn C. 2002. *The Anatomy of Racial Inequality*. Cambridge, MA: Harvard University Press.
- . 2007. "Racial Stigma, Mass Incarceration and American Values." Tanner Lectures in Human Values delivered at Stanford University, April 4 and 5, http://www.econ.brown.edu/fac/Glenn_Loury/louryhomepage/.
- . 2008. "Race, Incarceration, and American Values." In *Race, Incarceration, and American Values*, edited by Glenn Loury, with Pamela S. Karlan, Tommie Shelby, and Loïc Wacquant. Boston Review Book. Cambridge, MA: MIT Press.
- Lowndes, Joseph. E. 2008. *From the New Deal to the New Right: Race and the Southern Origins of Modern Conservatism*. New Haven, CT: Yale University Press.
- Maddox, Keith B., and Stephanie A. Gray. 2002. "Cognitive Representations of Black Americans: Re-exploring the Role of Skin Tone." *Personality and Social Psychology Bulletin* 28:250–59.
- Massey, Douglas S. 2007. *Categorically Unequal*. New York: Russell Sage Foundation.
- Massey, Douglas S., and Nancy Denton. 1993. *American Apartheid: Segregation and the Making of the Underclass*. Cambridge, MA: Harvard University Press.
- Massing, Michael. 1998. *The Fix*. New York: Simon & Schuster.
- Mendelberg, Tali. 2001. *The Race Card: Campaign Strategy, Implicit Messages, and the Norm of Equality*. Princeton, NJ: Princeton University Press.
- Murakawa, Naomi. 2005. "Electing to Punish: Congress, Race, and the American Criminal Justice State." Ph.D. dissertation, Princeton University, Department of Political Science.
- Musto, David F. 1973. *The American Disease: Origins of Narcotic Control*. New Haven, CT: Yale University Press.
- Musto, David F., and Pamela Korsmeyer. 2002. *The Quest for Drug Control: Politics and Federal Policy in a Period of Increasing Substance Abuse, 1963–1981*. New Haven, CT: Yale University Press.
- Myrdal, Gunnar. 1944. *An American Dilemma: The Negro Problem and Modern Democracy*. New York: Harper & Brothers.
- New York Times*. 1964. "GOP Moderates Score Goldwater." July 5, p. 31.
- Pager, Devah. 2007. *Marked: Race, Crime, and Finding Work in an Era of Mass Incarceration*. Chicago: University of Chicago Press.

- Phillips, Kevin P. 1969. *The Emerging Republican Majority*. New Rochelle, NY: Arlington.
- Pizzi, William T., Irene V. Blair, and Charles M. Judd. 2005. "Discrimination in Sentencing on the Basis of Afrocentric Features." *Michigan Journal of Race and Law* 10:327–53.
- Plant, E. Ashby, B. Michelle Peruche, and David A. Butz. 2005. "Eliminating Automatic Racial Bias: Making Race Non-diagnostic for Responses to Criminal Suspects." *Journal of Experimental Social Psychology* 42:141–56.
- Rachlinski, Jeffrey J., Sheri Lynn Johnson, Andrew J. Wistich, and Chris Guthrie. 2009. "Does Unconscious Racial Bias Affect Trial Judges?" *Notre Dame Law Review* 84(3):1195–1246.
- Reeves, Jimmie L., and Richard Campbell. 1994. *Cracked Coverage: Television News, the Anti-cocaine Crusade, and the Reagan Legacy*. Durham, NC: Duke University Press.
- Roediger, David R. 2008. *How Race Survived U.S. History*. London: Verso.
- Schieffer, Bob, and Gary Paul Gates. 1989. *Acting President*. New York: Dutton.
- Shelby, Tommie. 2008. "Commentary." In *Race, Incarceration, and American Values*, edited by Glenn Loury, with Pamela S. Karlan, Tommie Shelby, and Loïc Wacquant. Boston Review Book. Cambridge, MA: MIT Press.
- Spohn, Cassia. 2000. "Thirty Years of Sentencing Reform: The Quest for a Racially Neutral Sentencing Process." In *Criminal Justice 2000*, vol. 3, edited by the U.S. National Institute of Justice. Washington, DC: National Institute of Justice, U.S. Department of Justice.
- . 2002. *How Do Judges Decide? The Search for Fairness and Justice in Punishment*. Thousand Oaks, CA: Sage.
- Stout, David. 2007. "Harry Dent, an Architect of Nixon 'Southern Strategy,' Dies at 77." *New York Times*, October 2, p. B7.
- Thernstrom, Stephen, and Abigail Thernstrom. 1997. *America in Black and White: One Nation, Indivisible*. New York: Simon & Schuster.
- Unnever, James D. 2008. "Two Worlds Far Apart: Black-White Differences in Beliefs about Why African-American Men Are Disproportionately Imprisoned." *Criminology* 46(2):511–38.
- Unnever, James D., Francis T. Cullen, and James D. Jones. 2008. "Public Support for Attacking the 'Root Causes' of Crime: The Impact of Egalitarian and Racial Beliefs." *Sociological Focus* 41(1):1–33.
- Unnever, James D., Francis T. Cullen, and Cheryl N. Lero Jonson. 2008. "Race, Racism, and Support for Capital Punishment." In *Crime and Justice: A Review of Research*, vol. 37, edited by Michael Tonry. Chicago: University of Chicago Press.
- U.S. Sentencing Commission. 2007. *Cocaine and Federal Sentencing Policy*. Washington, DC: U.S. Sentencing Commission.
- Wacquant, Loïc. 2002a. "Deadly Symbiosis: Rethinking Race and Imprisonment in Twenty-first-Century America." *Boston Review* 27(April/May):22–31.
- . 2002b. "From Slavery to Mass Incarceration." *New Left Review* 13 (January–February):41–60.
- . 2008. "Commentary." In *Race, Incarceration, and American Values*, edited

- by Glenn Loury, with Pamela S. Karlan, Tommie Shelby, and Loïc Wacquant. Boston Review Book. Cambridge, MA: MIT Press.
- Weaver, Vesla Mae. 2007. "Frontlash: Race and the Development of Punitive Crime Policy." *Studies in American Political Development* 21(Fall): 230–65.
- Western, Bruce. 2006. *Punishment and Inequality in America*. New York: Russell Sage Foundation.
- Whitebread, Charles H., II, and Richard J. Bonnie. 1974. *The Marihuana Conviction: The History of Marihuana Prohibition in the United States*. Charlottesville: University Press of Virginia.
- Wickham, Dewayne. 2008. "Bill Clinton Expresses 'Regret' on Crack Cocaine Sentencing." *USA Today*, March 4, <http://www.nacdl.org/public.nsf/media/sources/20080304a?opendocument>.
- Wilson, William Julius. 1987. *The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy*. Chicago: University of Chicago Press.
- Wolfe, Tom. 1987. *The Bonfire of the Vanities*. New York: Bantam.